



Identifying and Managing Electronic Records

Carol Barber
Chief Technology Officer, Erie 1 BOCES
Executive Director, WNYRIC

Why we are concerned:

- ▶ Electronic information?
- ▶ Records management?
- ▶ Records retention?
- ▶ Liability for misuse?
- ▶ “E-discovery”?
- ▶ Litigation hold?
- ▶ Spoliation?
- ▶ Sanctions?
- ▶ \$\$\$\$\$\$\$\$ judgments?



Electronic information: Where could it be?

- ▶ Resides on network/active server: district, BOCES, other
- ▶ Resides on hard drive: individual desktop, laptop
- ▶ Document management systems
- ▶ Portable media: jump drive, CD/DVD, optical disk
- ▶ Portable devices: cell phones, Smartphones, Blackberrys, PDAs, other handhelds
- ▶ Backup tapes (“snapshots”), other 3rd party locations
- ▶ Employee’s home computer
- ▶ Web 2.0 tools, web sites, voice mail, text messaging

E-mails:

Sheer volume of e-mail produced is problematic – also consider these copies:



sender's copy
recipient's copy
cc:'s
router copy
disaster back up
“personal” archives
organizational archive
attachments

etc....

E-Mail Might Need to be Searched, Retrieved and/or Produced because of:

- ▶ Individual employee request
- ▶ Employer:
 - monitoring of use of district resources/compliance with AUP
 - internal investigation of alleged misconduct by employee or student
- ▶ Police/FBI investigation
- ▶ Freedom of Information Law (“FOIL”) request
- ▶ FERPA/IDEA request
- ▶ Current litigation
 - Obligation to provide information you wish to use to support claims or defenses in pending lawsuit, arbitration or other proceeding
 - Specific discovery request from other party in pending lawsuit, to produce designated information

Reasons E-Mail Might Need to be Retained for a Certain Period of Time:

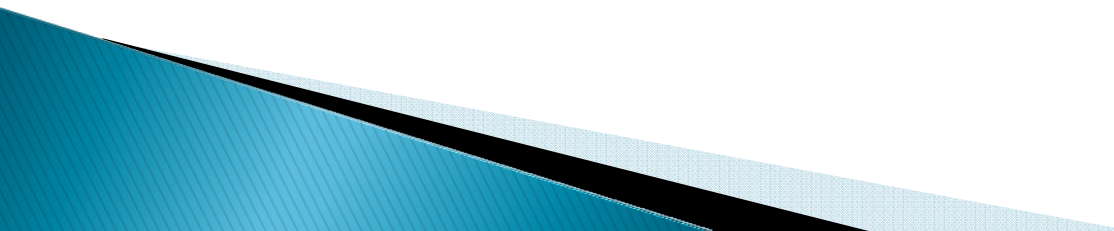
- ▶ “Litigation hold” has been imposed (*e.g.*, “E-Discovery rules”)
 - Duty to preserve arises whenever a party *reasonably anticipates* litigation
 - Sanctions for failure to produce
 - Subject to “spoliation” claim
- ▶ “Safe Harbor” – Sanctions *cannot* be imposed for failing to produce ESI lost as a result of the routine, good-faith operation of an electronic information system
 - BUT “good faith” may involve *intervention* to modify or suspend certain features of that routine operation to prevent the loss of ESI, if that ESI is subject to a preservation obligation

Reasons E-Mail Might Need to be Retained for a Certain Period of Time:

- ▶ NYS Records Retention and Disposition Schedule ED-1
 - Minimum length of time records of local government must be kept
 - School districts and BOCES
 - http://www.archives.nysed.gov/a/records/mr_pub_ed1.pdf

TO: Mr. Job Candidate
FROM: Ms. HR Director
Cc: Keeper of sub list
Cc: Substitute supervisor

This is to officially notify you that your appointment to the substitute teacher list has been made effective September 1, 2009.....



TO: Carol

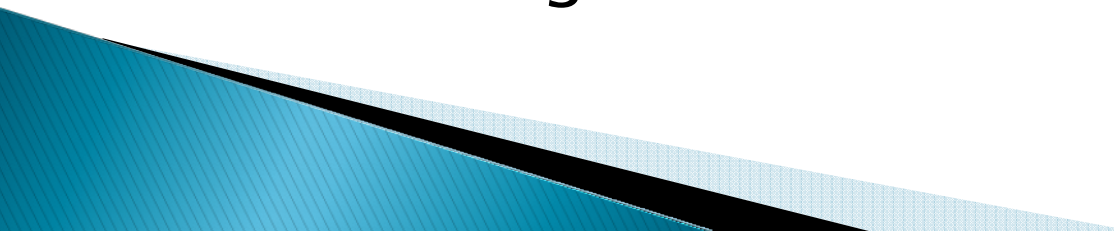
FROM: Colleen

Please order me some more of those blue pens I like without the caps. Thanks!

TO: All Staff

FROM: HR Director

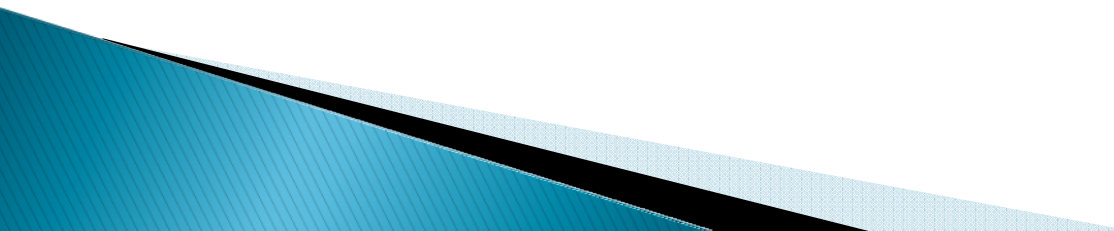
The location of the blood drive scheduled for this Friday at noon has been changed to the High School



TO: Union President

FROM: HR Director

This is to confirm our conversation in which we agreed that the intent of the parties with respect to the new language in Article IX, Section 2 was....

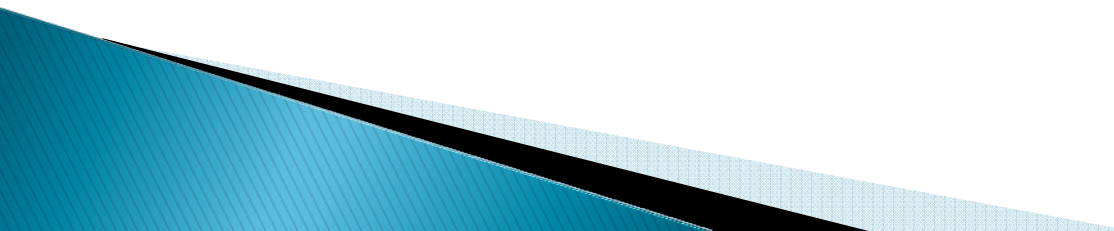


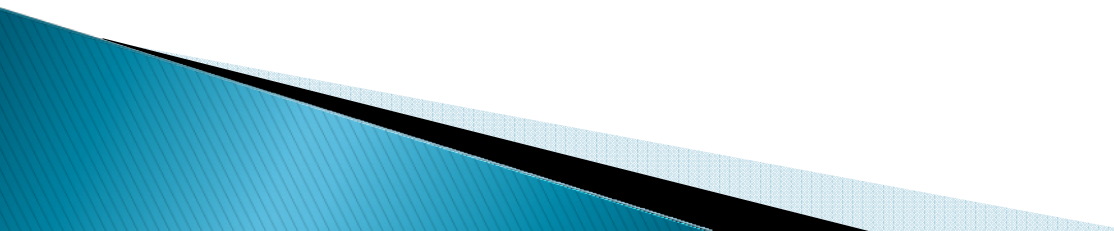
TO: Supervisor

FROM: Employee

Please put me down for a sick day for tomorrow. I will not be in.

- ▶ To: Coordinator of BOCES Program
- ▶ From: Special Ed. Coordinator
- ▶ Please keep me informed about my referral for services for my student. He has special needs and I need to know if your program will work!

- ▶ To: Dave's math teacher
 - ▶ From: Dave's English teacher
 - ▶ What do you think of the new student? Should we refer him for services? That's a lot of paperwork, lets just see what happens!
- 

- ▶ To: Principal Carol
 - ▶ From: Asst. Principal Dave
 - ▶ Shari was suspended today for the third time this year. Her parents may have retained an attorney. Do we have her records from Fall of 2006?
- 

Don't overlook other sources of retention periods:

- ▶ For example, in the employment context:
 - Age Discrimination in Employment Act (ADEA)
 - Title VII
 - Immigration and Nationality Act
 - Fair Labor Standards Act
 - Internal Revenue Code
 - ERISA/COBRA
 - HIPAA
 - OSHA
 - Controlled Substances and Alcohol Use and Testing
 - Americans with Disabilities Act (ADA)
 - Family and Medical Leave Act (FMLA)

New York State Archives

“Managing E-mail Effectively”

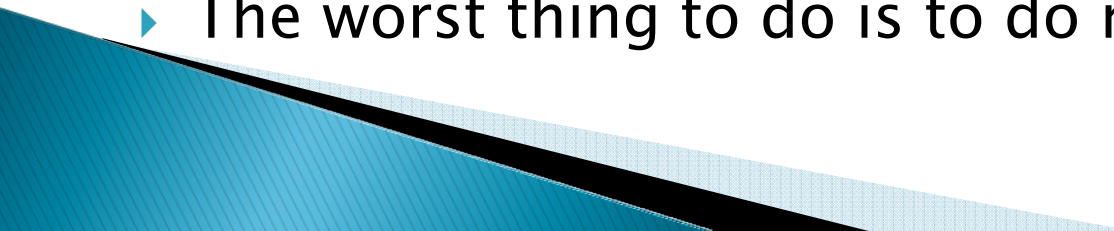
Archives Technical Information Series #62 (2002)

“Developing a Policy for Managing E-mail”

(2008)



Getting started:

- ▶ Pull together a team – BOCES has a service if you wish guidance in this process
 - ▶ Identify what electronic records you have – what/why/where/who is responsible and when to discard
 - ▶ Establish a Comprehensive Document Retention Policies and Procedures document
 - ▶ Deal with email in some manner while you work through the entire process which will be lengthy
 - ▶ Educate your staff to their responsibilities
 - ▶ Update constantly as new technologies emerge
 - ▶ The worst thing to do is to do nothing....
- 

Questions...

- Carol Barber – Erie 1 BOCES/WNYRIC
 - cbarber@e1b.org
- Deb Arlington for MailMeter
 - darlingt@e1b.org
- Your school attorney
- Policy Services – Erie 1 BOCES
 - jhallgren@e1b.org